

REMARKS

Claims 1-39 have been examined. Claims 31-34 have been amended. Claims 1-30 have been canceled, without prejudice, for filing in a continuation application. Claim 40 has been added to depend from claim 31. Reconsideration of the claims, as amended, is respectfully requested.

Claim Rejections – 35 USC 102

Claims 1 and 3 have been rejected under 35 USC 102(b) as being anticipated by Singier. Claims 1 and 3 have been canceled, without prejudice, for filing in a continuation application. Hence, this rejection is rendered moot.

Claim Rejections – 35 USC 103

Claims 2, 6 and 7 have been rejected under 35 USC 103(a) as being unpatentable over Singier. Claims 4 5 and have been rejected under 35 USC 103(a) as being unpatentable over Singier in view of Mauro. Claims 11-17 and 31-37 have been rejected as being unpatentable over Singier in view of Mauro. Claims 8-10 have been rejected under 35 USC 103(a) as being unpatentable over Singier in view of Haver. Claims 18-20 and 38-39 have been rejected under in view Singier and Mauro and Haver. Claims 21-24 and 27-30 have been rejected under 35 USC 103(a) as being unpatentable over Singer in view of Haver. Claims 25 and 26 have been rejected under 35 USC 103(a) as being unpatentable over Singier and Haver and Mauro.

Claims 2 and 4-30 have been canceled, without prejudice, for filing in a continuation application. Hence, the rejection of these claims is rendered moot.

The rejection of claims 31-39 is respectfully traversed. As now pending, independent claim 31 claims a method for supplying liquid to an aerosolization device. According to the method, an ampoule is provided that comprises an ampoule body having a top end, a bottom end, and a sealed interior containing a liquid, an air vent disposed near the top end, and a bottom tab that is coupled to the bottom end. The bottom tab is removed to create a drain opening, and the ampoule is inserted into a receiving portion of the aerosolization device. The air vent is also

opened. Upon opening of the air vent, the liquid in the interior flows out of the drain opening and into the aerosolization device where it is available for aerosolization by the aerosolization device.

In contrast to the method of claim 31, the combination of Singier and Mauro fails to teach or suggest all of the claim limitations. For example, claim 31 uses an ampoule having a bottom end with a drain opening and a top end with an air vent. The bottom tab is removed to form the drain opening and the air vent is formed near the top end. With the ampoule in the aerosolization device, the liquid is able to flow out of the drain opening and into the aerosolization device.

These features are not taught or suggested in the cited references. For example, the office action recites that Singier teaches a bottom tab 20/23 that is removable to form a drain opening. Applicants respectfully disagree. Rather, Singier teaches that, "The sealing of the plug is assured by welding the different component parts of the plugging device together." Col 5, lines 15-18. Since the pieces are welded together, they are not removable to form a drain opening. To drain the liquid, "a transfusion device is placed into the plugging device. See Col. 5, lines 43-44.

Hence, Singier fails to teach or suggest the removal of a bottom tab to create a drain opening or the draining of liquid into an aerosolization device. Indeed, nowhere in Singier is there any disclosure of an aerosolization device. Rather, the bottle of Singier is used for intravenous injection. See Col. 1, line 13. As such, to remove liquids, a transfusion device is placed into the plugging device. There is no teaching (an in fact it would be impossible without destroying the bottle) to remove a bottom tab to create a drain opening as claimed.

The Mauro patent also fails to teach or suggest such limitations. While the Mauro patent does teach the use of a nebulizer, it is used with a far different type of ampoule. The container of Mauro is opened by removing end 14 and placing a dip tube 62 into the container. However, liquid is not drained into the nebulizer. This is because the rest of the container remains sealed, i.e. there is no air vent at the top end. Instead, a gas is injected into the nebulizer to create a vacuum to suck the liquid out of the container. See Col. 4, lines 1-25.

As such, the Mauro patent fails to describe the opening of the drain opening and an air vent to permit liquids to flow out of the drain opening and into the aerosolization device. Hence, even if Singier is combined with Mauro, the combination does not teach all of the claim

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limitations of claim 31. Therefore, it is respectfully requested that the section 103 rejection of claim 31 be withdrawn. Claims 32-37 depend from claim 31 and are distinguishable for at least the same reasons.

Claims 38 and 39 are also distinguishable over Singier and Mauro for at least the reasons just described. The Haver reference describes a pressurized canister which is far different from the ampoule of claims 38 and 39. Hence, claims 38 and 39 are distinguishable for at least the same reasons.

Double patenting

Claims 1-30 have been provisionally rejected under 35 USC 101 as claiming the same invention of copending application nos. 09/876542 and 09/876402. As previously described, claims 1-30 have been canceled, thereby rendering this rejection moot.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,


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